I affirm and value **morality**.

The neg has the positive burden to defend a categorical moral rule that prohibits the use of deadly force against the perpetrator of domestic violence. Situation-based negations don’t disprove the resolution, because they do not deny the possibility of permission existing in other circumstances; in the aff world, survivors of domestic violence can still choose not to kill based on countervailing considerations. In addition, this preserves reciprocal burdens because it requires the neg to establish a positive advocacy rather than simply deny assumptions in the resolution. Reciprocity is key to fairness because it ensures equal strategy options.

All moral theories presuppose that agents’ actions are the result of conscious deliberation; those that do not are trivially committed to some form of determinism. If agents do not possess free will, then they cannot make a ‘wrong’ choice, and hence in a predetermined world all actions are morally permissible. To escape the problem of determinism, moral theories must adopt an agent-centered viewpoint and recognize that their subjects value their freedom to choose. Philip **Pettit[[1]](#footnote-1)** writes:

**In order to deliberate about what to do,** in the manner that is distinctive of human beings, **we have to assume with respect to the options before us** in any context **that we can take one or we can take another.** They are there for us as possibilities that, in the most basic sense possible, are available for choice; they are, quite simply, choosables or enactables. Sometimes, of course, we think of an option, not in the basic terms in which it is so available, but under a richer description that reaches out to include a desired but saliently uncertain consequence; we think of it as hitting the target, for example, rather than just trying to hit the target. But in every case there is an aspect under which each option presents itself to us such that we can think: I can just do that, or I can just refuse to do that; what I do in this choice is up to me. Options are not restricted to basic actions like moving a finger or uttering a sound, which I can intentionally perform without doing anything else as an intentional means of performing them (Hornsby 1980). But they must be something of which, in context, I can think, and think rightly: this is within my power of choice; this is something I can do. // The axiom of personal choice is the claim that **there are many scenarios where we are in a position to make these can-do assumptions [because]** and are right to make them: the options we face really are options, so that we can choose or not choose them, at will. I do not offer any defense of the claim here. Doing so would take me far afield, into issues of metaphysics (see Pettit & Smith 1996, Pettit 2001). And in any case a defense is not really necessary, since the axiom is unlikely to be contested amongst **moral** or political **theorists**. Such theorists **presuppose the possibility of personal choice**, as that is understood here, and look at the issues that arise in light of that presupposition. // Before leaving this first axiom, however, it is worth drawing attention to one important aspect of the claim, since it will be relevant later. This is **the notion of being able to choose** this or that option, or having the option within one’s range of choice, **is** distinctively **agent-centered in character. When we think of an agent from a third person point of view,** say as a neural system, or a system of psychological dispositions, or as a sociological type, **we will naturally adopt a** probabilistic viewpoint – or if we are sure enough of our ground, a **deterministic [viewpoint]** one – assigning differing degrees of probability to different options. **But** none of us can think like that of ourselves or the options before us as we confront a choice and exercise deliberation. In order to be deliberative agents, in order to perform as the makers of decisions, we must set aside the predictive point of view. **Predicting decisions is not something we can do as we make the very decisions predicted.** // **What is true of how we view ourselves as agents holds equally of how we must view others as agents**: that is, view them **from** what we might call **the second** as distinct from the third **person standpoint** (Darwall 2006). **If we think of others as agents in a certain context of decision, then** we have to think of them as having this or that option at their disposal, so the choice is up to them. We have to think of them in such a way that **should they choose to do something that hurts us or hurts another,** then **we will not view that action in the dispassionate manner of the** inquisitive **scientist** or therapist. As we would contemplate our own ill-doing with a sense of guilt of shame, so under normal circumstances we will have to view theirs with a feeling of resentment or indignation. The theme will be familiar from the tradition of thought that began with Peter Strawson’s 1960s paper on “Freedom and Resentment” (Strawson 2003), a way of thinking with which I strongly identify (Pettit & Smith 1996; Pettit 2001).

Regarding others from a second-person standpoint means that if we take as valuable our own capacity to choose our ends, we cannot deny the value of others’ ability to choose either. Any interference in an agent’s deliberation is antithetical to ethical theories’ presumption that all individuals are able to make choices as a result of free will. This means that domination, or being subject to the arbitrary power of a master, is a prima facie moral wrong. **Pettit 2** continues:

The second axiom asserts the **[There is a] possibility of** a specific sort of relationship of **alien control** in which one party may stand toward another, in particular **toward someone who faces a choice between certain options. In this relationship the first party will control what the second does,** at least to some degree, **and control it in an alien way that takes from the personal choice of that agent, jarring with the deliberative can-do assumptions [of moral theories]** discussed under the first axiom. Suppose that A stands in this relation to B, when B faces a choice between options, x, y, and z. As an alien controller, A will exercise some measure of control over what B does, and this control will mean that with respect to x or y or z, B is no longer able to think, or able to think rightly: I can just do that; the choice is up to me. // In the sense of interest in the current discussion, A will exercise control, alien or non-alien, over B’s choice just so far as the following is true. First, A has desires, however implicit, over how B chooses on specific occasions or just in general; at the limit, A may just want to have some impact, no matter in what direction, on B’s choices. Second, A acts on these desires, no doubt among others, seeking a certain pattern in B’s choices. And, third, A’s presence makes a desired difference. Making a difference need not mean making an actual difference, of course. It may just mean making things assume a shape such that the probability of B’s taking the desired pattern is raised; more specifically, it is raised beyond the level it would have had in A’s absence. The extent to which A’s presence and activity increases the probability of B’s acting according to the desired pattern will be a measure of the degree of A’s control over that pattern. // The **control** exercised by A may be alien or alienating in any of three broadly different ways. It **may impact on** B’s **ability to make a deliberative choice** so that the assumption of personal choice is undermined on a general front. **Or it may impact on the specific options that fall within the domain of** B’s **choice**, in which case there are two subpossibilities. The control may simply remove one or another option from the set of options faced by B, reducing the total options available, or may seem to remove it. Or it may replace one or another option by a significantly changed option, or seem to replace it by a significantly changed option. An option will be significantly changed – it will count as a different option – so far as it differs in regard to some feature that is valued or disvalued by the agent (Broome 1991: ch. 5; Pettit 1991). Suppose I can choose x in a world where it has a valued or disvalued feature, F, or where there is a probability p that it will lead to a valued or disvalued result, R. Under this criterion of option-identity, you will replace x by a different option, x\*, if you do something to affect that feature, F, or the probability of that result, R; more in the last section on this criterion of option-identity. // These varieties of impact – mnemonically, reduction, removal, and replacement – will involve alien or alienating control, since they all undermine the deliberative assumption of personal choice. As we know, this is the assumption that with each option originally on offer the agent, B, is positioned to think, and rightly think: I can do that. If B’s ability to choose is reduced, then he or she will not be in a position to think that thought correctly, whether with some or all of the options. If an option is removed, B will not be right to think the thought of that option in particular; and if it seems to be removed, B will not be in an evidential position to think it, whether correctly or incorrectly: the option will not present itself as accessible. Finally, if an option is replaced, B will not be right to think the thought of the option originally confronted; and if it seems to be replaced, B will not be in an evidential position to think it: an option with a significantly different character will present itself at the site of the original option. // Alien control requires a relationship between individuals and individuals, individuals and groups, or groups and groups, in which the controller is aware of the controlled as an agent subject to a suitable form of control. Strictly, the controlled agent, B, need not be aware of the controller, A; B will be controlled, whether or not B registers or feels the control. But A has to be aware of B and of B’s susceptibility to intervention; otherwise A would not be in a position to choose to intervene in B’s affairs. // The fact that alien control requires this awareness on the part of the controller means that an agent like B may escape the control of a more powerful agent, A, because A is unaware of what he or she can achieve – maybe unaware even of the existence of B. In such a case there is potential alien control but not actual alien control. The case is like that in which there is no actual agent in A’s position but it is possible that such an agent might materialize; it is possible, for example, that a number of people might incorporate in order to play a controlling part in relation to another individual or group. // **Alien control will be unwelcome to any victim who values having personal choice over independently available options.** Alien **control compromises such choice, jeopardizing one or more can-do assumptions.** A victim of alien control may welcome paternalistic intervention in some cases, of course – an alcoholic may thank you for locking up the booze cupboard – but will not do so on the grounds of thereby retaining personal choice. Alien control is necessarily bad for personal choice but personal choice is not necessarily something that agents may cherish.

Preventing alien control of one’s capacity for free choice requires that one be guaranteed a place to exercise that freedom. Accordingly, the value criterion is **maintaining the right to adequate housing**. There are two warrants. **First**, in order to exercise freedom, you must be able to situate your rights spatially. Without the guarantee of a minimum level of housing, others can exclude you from places and render you completely unfree. Jeremy **Waldron[[2]](#footnote-2)** writes:

At the outset I recited the truism that **anything a person does has to be done somewhere.** To that extent, **all actions involve a spatial component** (**just as many actions involve**, in addition, **a material component** like the use of tools, implements, or raw materials). It should be fairly obvious that, **if one is not free to be in a certain place, one is not free to do anything at that place.** If I am not allowed to be in your garden (because you have forbidden me) then I am not allowed to eat my lunch, make a speech, or turn a somersault in your garden. Though I may be free to do these things somewhere else, I am not free to do them there. **It follows**, strikingly, **that a person who is not free to be in any place is not free to do anything; such a person is comprehensively unfree.** In the libertarian paradise we imagined in the previous section, **this [is]** would be **the plight of the homeless. They [are]** would be **simply without freedom** (or, more accurately, any freedom they had would depend utterly on the forbearance of those who owned the places that made up the territory of the society in question).

**Second**, although publicly provided space may provide some measure of freedom, without the right to exclude others from that space, one is still subject to potential interference. David **Barros[[3]](#footnote-3)** writes:

**It could be argued that** privacy and **autonomy can be maintained if there is sufficient public property available to allow** those who lack private property to maintain **some** measure of **isolation.** A person lacking private property, for example, could conceivably achieve a degree of freedom and privacy in a remote corner of a vast public park. The degree of freedom provided by this sort of isolation, however, is a bare shadow of that provided by private ownership of real property. **[But] Without the right to exclude, the propertyless person on public land is subject to interference by any other person who happens to wander by. Isolation on public property also does not provide any real protection to the individual who engages in activities frowned upon by the rest of the community.** // **Meaningful zones of freedom and autonomy therefore require individual ownership** (either freehold or leasehold) **of** specific parcels of real **property.** As noted above, however, the conception of ownership at issue here could both limit the right to use and eliminate the right to alienate. **In a practical sense, this conception of freedom requires that an individual have a home**; it is conceivable to imagine someone enjoying their zone of autonomy and privacy in a tent next to a campfire, but this is an unappealing conception of freedom in the modern world. I do not mean to suggest here that every person has a deontological claim to a home or to a certain amount of real property. Rather, I simply suggest that to the degree that a claim can be made – on deontological, consequential, or other grounds – that each person should be able to enjoy the zone of autonomy and privacy created by private property, then that claim is empty if a person has no property. The link between property and freedom in turn may support an argument for property redistribution sufficient to allow each person to have at least a degree of privacy and autonomy.

I contend that protecting one’s claim to a home justifies the use of deadly force in response to domestic abuse. **Subpoint A**:Domestic abuse undermines the protection offered by a home and turns it into a torture facility where the victim is attacked without restraint. Guilia **Paglione[[4]](#footnote-4)** writes:

This general standard goes to the heart of women's experience of submission in the home and highlights their right to live free from violence in the domestic sphere. If **adequate housing** is that which **guarantees** to its occupants **a life of security, peace, and dignity**, it can be inferred that **every housing situation that does not provide for such conditions** is not in line with the legal interpretation of the right to housing and therefore **constitutes a breach of the right to housing** itself. **An abused woman is** in fact **systematically deprived of security, peace, and dignity. The violence** she is submitted to **turns her domestic environment into a place of oppression, fear, and humiliation. The home is no longer a place of protection and harmony, but a prison with the male partner acting as an unrestrained torturer.** Therefore, the right of women to live securely, with dignity, and in peace is bereft of its core aspect and not enjoyable in its substance. Unfortunately, the Committee does not further develop the concept of adequacy, nor does it establish any link between adequacy on the one side and security, peace, and dignity on the other side. It merely clarifies that “[a]dequate shelter means . . . adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.”

And, because many cultures presume men to be the heads of the household, women are uniquely vulnerable to domestic violence because they face homelessness if they leave. **Paglione 2:**

The CESCR Committee explains that legal security should protect the individual from "forced eviction, harassment and other threats." Despite the theoretically broad formulation of "other threats," this standard has been consistently interpreted as limited to the protection from "forced evictions, harassment and other threats" carried out by individuals external to the family, as in the case of government officials carrying out forced evictions. The legal security of tenure is usually considered a legal document that protects the inhabitants as a cohesive group from any external threat against their possession. However, a more detailed analysis of the most typical family structures, and an examination of who actually enjoys this legal security on paper, demonstrates that **throughout the world, security of tenure is most often granted to men,** at the expense of women, **because men are presumed to be the heads of the households.** In many regions of the world, **women are** de jure or de facto **prevented from** buying, inheriting, or **owning their homes as a result of** discriminatory **laws and customs** regulating matrimonial and inheritance laws, as well as access to property and housing.27 In these situations women are clearly denied the main principle of the right to housing. The standard of legal security of tenure is of fundamental importance to women, and it acquires an essential role for battered women. As the Special Rapporteur on Adequate Housing under lined in his 2003 report, Women and Adequate Housing: // “The attainment of legal security of tenure is of critical importance to women; without it they are disproportionately affected by forced evictions, . . . domestic violence, . . . discriminatory inheritance laws, development projects and globalization policies that circumscribe access to productive land and natural resources.” // **When battered women are prevented** by laws, policies, customs or culture **from attaining a legally secured tenure, the possibility of leaving** an abusive husband **is very limited. Shelters** for battered women **are not always available, and women who** decide to **abandon violent households often find no alternative to homelessness**, ending up in urban slums. **This implies that** **an abused woman without real access to a legally secured tenure is indirectly forced to stay in an abusive relationship and** endure physical and psychological violence. She is forced by the state's laws, or by society's practice, to **remain prisoner in her own home or, alternatively, to accept homelessness** and its connected risks. The Special Rapporteur drew attention to this phenomenon in the same report, stating: // In most countries, whether developed or developing, domestic violence is a key cause of women's homelessness and presents a real threat to women's security of person and security of tenure. Many women continue to live in violent situations because they face homelessness if they resist domestic violence.

Next, women are trapped in abusive relationships because the violence escalates if they attempt to leave or procure another place to stay. A preponderance of empirical studies agrees. Michael **Johnson[[5]](#footnote-5)** writes:

The feminist analysis of domestic violence has long recognized that **attempting to leave an intimate terrorist puts a woman at increased risk of violence** at his hands, **because leaving is the ultimate threat to his control.** Early research showed that, contrary to common belief, the majority of women who were victims of intimate partner assault were separated or divorced. Another government report indicated that **women separated from their husbands were twenty-five times more likely** than married women **to be assaulted** by their partners. And the postseparation violence can be homicidal. A recent eleven-city study comparing cases in which women had been murdered by their partners with a control group of abused women found that **[and] among the major risk factors for homicide was** “**estrangement**, especially from a controlling partner.” Similarly, a Canadian study found that **the risk of being killed** by their intimate partner **is almost ten times greater for women separated from their husbands** than for those still married. **Attempts to** retain or **regain control** after a partner leaves **often go beyond** the use of **violence, involving many of the same tactics** that were **used** within the relationship **to** monitor and **control the partner before she left.** Of course, such behavior is most familiar to us as “stalking”; a recent comprehensive review of the stalking literature indicates that **half of all stalking emerges from preexisting** romantic **relationships**. Ending the relationship does not always end the abuse.

**Subpoint B:** Victims are justified in using deadly force in defense of their claim to a house. Most situations where battered women kill are empirically confrontational, so women are faced with a choice between standing their ground and retreating to safety. Holly **Maguigan[[6]](#footnote-6)** cites several studies:

Current work by scholars in other disciplines is consistent with the conclusion that **most battered women who kill do so during confrontations.** It is estimated that each year in the United States approximately 500 women kill their spouses. Most female homicide defendants had been battered by the men whom they killed. **Studies** by sociologists, criminologists, and social psychologists **have shown** that the vast majority of homicides by women of their partners occur during confrontations. These scholars often do not use the term “confrontation.” Most describe cases involving ongoing attacks by the defendants as ones resulting from “victim precipitation,” a term first used by Marvin Wolfgang to describe killings in which the victim was the first to use physical force against the slayer. “Victim precipitation” is a narrower category than the class of cases meeting the legal requirements for a self-defense instruction, since an event is only classified as victim precipitated if the decedent was first to use actual physical force. It is, however, also potentially a broader concept because the force directed at the defendant need not amount to a deadly attack by the victim. Even with this different definition **the numbers of male-precipitated homicides by women partners are startling. One study** of homicides by women against husbands **in Detroit** between 1982 and 1983 **found that 71% of** these **cases were victim precipitated**, in contrast to general homicide populations in which the victim-precipitation rate is between 22% and 37.9%. **Another** study, **based on a six-city** “random sample” **survey** of female homicide offenders, **found that 83.7% of killings** by women of their mates **were the result of victim precipitation. Still another [found]** resulted in the finding **that only 12%** of all homicides by women **were clearly nonconfrontational. Both** the scholarship based on **the national statistics compiled by the FBI and** the studies based on **more local samples conclude that most women** who **kill** their partners do so **in confrontational situations.**

Victims of domestic violence have a right to use deadly force if they have no obligation to retreat from confrontation. The justification for the duty to retreat is that victims can always escape to the refuge of their house in case of a confrontation. But when they are threatened inside their home, they are under no obligation to retreat from it. Benjamin **Cardozo[[7]](#footnote-7)** writes:

We think that these instructions are erroneous as applied to the case at bar. The homicide occurred in the defendant's dwelling. **It** is not now, and **never has been the law that a man assailed in his own dwelling, is bound to retreat. If assailed there, he may stand his ground**, and resist the attack. **He is under no duty to take to** the fields and **the highways, a fugitive from his own home.** More than two hundred years ago it was said by Lord Chief Justice Hale: In case a man is assailed in his own house, **he** "**need not [retreat]** fly as far as he can, as in other cases of *se defendendo*, **for he hath the protection of his house to excuse him from [retreat,]** flying, **for that would** be to **give up** the possession of **his house to his adversary by his flight.**" **Flight is for sanctuary and shelter, and shelter**, if not sanctuary, **is in the home.** That there is, in such a situation, no duty to retreat is, we think, the settled law in the United States as in England. It was so held by the United States Supreme Court in Beard v. United States (158 U.S. 550). In that case there was a full review of the authorities, and the rule was held to extend not merely to one's house but also to the surrounding grounds. That case has been followed by the same court in later decisions. (*Alberty* v. *U. S.*, 162 U.S. 499; *Rowe* v. *U. S.*, 164 U.S. 546, 557.) The same rule is enforced in Michigan (*Pond* v. *People*, 8 Mich. 150; *People* v. *Keuhn*, 93 Mich. 619); in New Jersey (*State* v. *Zellers*, 7 N. J. L. 220); in Vermont (*State* v. *Patterson*, 45 Vt. 308); in Wisconsin (*State* v. *Martin*, 30 Wis. 216); in Alabama (*Green* v. *State*, 96 Ala. 24); in Georgia (*Haynes* v. *State*, 17 Ga. 465); in Florida (*Wilson* v. *State*, 30 Fla. 234); in Ohio (*State* v. *Peacock*, 40 Ohio St. 333); in North Carolina (*State* v. *Taylor*, 82 N. C. 554); and in other jurisdictions. It is also stated as undoubted law in all the leading treatises. (1 Wharton Crim. Law, sec. 633; 1 Bishop Crim. Law, secs. 858, 859; 3 Russell on Crimes, 207, 213; 2 East Pleas of the Crown, 372; Foster's Crown Cases, c. 3, p. 273.) **The rule is the same whether the attack proceeds from some other occupant or from an intruder.** It was so adjudged in *Jones* v. *State* (76 Ala. 8, 14). "**Why**," it was there inquired, "**should one retreat from his own house, when assailed by a partner or co-tenant, any more than** when assailed **by a stranger** who is lawfully upon the premises**? Whither shall he flee**, and how far, and when may he be permitted to return**?**" We think that **the conclusion there reached is sustained by principle**, and we have not been referred to any decision to the contrary. **The duty to retreat**, as defined in the charge of the trial judge, **is** one **applicable to cases of sudden affray** or [manslaughter] chance medley, to use the language of the early books. (Blackstone Comm. bk. IV, ch. XIV; East Pleas of the Crown, *supra*; Russell on Crimes, *supra*; *People* v. *Fiori*, 123 App. Div. 174, 188.) We think that **if the situation justified the defendant** **as** a **reasonable** man in believing that he was about to be murderously attacked, **he had the right to stand his ground.**

The duty to retreat exists only in cases of sudden affray, where somebody randomly starts attacking you, but the fact that domestic violence is repeated rules out any such claims. The abuser has proven a criminal intention against the victim, so she is justified in using deadly force against him.

And, the privilege of non-retreat applies to attacks by cohabitants as well, so even if the abuser also has a claim to the home, it’s not relevant in cases of defense of habitation. Catherine **Carpenter[[8]](#footnote-8)** writes:

**If cohabitants must retreat from the home** because they cannot eject each other, **it suggests that the privilege of non-retreat only applies against those whom the cohabitant can lawfully eject.** This situation would be primarily one where the trespasser’s intrusion threatens the possession and enjoyment of a resident. **Under this view, the deadly cohabitant's** right of **presence** in the home **would not**, by definition, **amount to** that level of **intrusion** that would threaten the possession and enjoyment of the innocent cohabitant. // Unfortunately, **[But] requiring that the innocent cohabitant’s** peaceful **possession be disturbed** before the Castle Doctrine applies **blurs the distinction between defense of habitation and self-defense.** While some level of intrusion is generally required for defense of habitation, there is usually no such requirement under the claim of self-defense in the home. **Emphasizing the status of the deadly aggressor in a self-defense claim is** most likely, then, **a**n unintended **confusion of the principles of defense of habitation.** If an intrusion is not a required element of self-defense in the home, then it follows that the Castle Doctrine’s applicability should not be based on the deadly cohabitant's lawful presence. **Without the need for** the underlying event – the **intrusion** – **the Castle Doctrine should apply equally to all unprovoked and deadly attacks, regardless of the status of the attacker.**

In that intrusion isn’t the only threat to the possession of a home that justifies defense of habitation, the status of the abuser as a cohabitant does not prohibit the victim from standing her ground. Because there is no obligation to retreat from confrontation, victims of abuse are justified in using deadly force in response to repeated domestic violence.

1. Pettit, Philip. “Republican Freedom: Three Axioms, Four Theorems.” *Republicanism and Political Theory,* eds. Cécile Laborde and John Maynor. Malden: Blackwell Publishing, 2009. PDF. [↑](#footnote-ref-1)
2. Waldron, Jeremy. “Homelessness and the Issue of Freedom.” *UCLA Law Review* 39.295 (1992): 295–324. HeinOnline. [↑](#footnote-ref-2)
3. Barros, D. Benjamin. “Property and Freedom.” *NYU Journal of Law and Liberty* 4.36 (2009): 36–69. Web. [↑](#footnote-ref-3)
4. Paglione, Guilia. “Domestic Violence and Housing Rights.” *Human Rights Quarterly* 28.1 (2006): 120–147. JSTOR. [↑](#footnote-ref-4)
5. Johnson, Michael. *A Typology of Domestic Violence.* Lebanon: Northeastern UP, 2008. Google Books. [↑](#footnote-ref-5)
6. Maguigan, Holly. “Battered Women and Self-Defense.” *U. of Pennsylvania Law Review* 140.2 (1991): 379–486. JSTOR. [↑](#footnote-ref-6)
7. *People* v. *Tomlins*. 213 N.Y. 240. 1914. Majority decision by Benjamin Cardozo. LexisNexis. [↑](#footnote-ref-7)
8. Carpenter, Catherine. “Of the Enemy Within, the Castle Doctrine, and Self-Defense.” *Marquette Law Review* 86.4 (2003): 653–700. Web. [↑](#footnote-ref-8)